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April 22, 2003

Sent via e-mail, hand delivery and/or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02114

Re: Funding Mechanism Rulemaking For Wireline E-911, D.T.E. 03-24

Dear Ms. Cottrell:

The Attorney General submits these comments to the Massachusetts Department of Telecommunications and Energy ("Department" or "DTE") in response to the Department's March 13, 2003 Order Instituting Rulemaking on proposed enhanced 911 ("E911") wireline regulations.

I. BACKGROUND

The Department created its proposed regulations in response to a new law, Chapter 239 of the Acts of 2002, "An Act Relative To Funding For Certain Telecommunications Programs Within the Commonwealth" ("Act"). The law replaces the current funding mechanism for E911 and disability equipment and training, directs the Department to determine whether to repay any of the existing E911 deficit, requires the Department to oversee the ongoing E911 wireline expenditures, and orders the Department to make long-term recommendations on funding E911 wireline services. The fund will be managed by the Statewide Emergency Telecommunications Board ("SETB") and can be used only for these purposes.¹

According to Verizon New England, Inc., d/b/a Verizon Massachusetts ("Verizon"), its

¹ Currently, wireline E911 funds are generated through the charges Verizon collects from residential and business customers who make more than ten direct dialed directory assistance calls per month. The Department-approved rate for these calls is \$.34 per call; the ten calls per month allowance is set by statute. G. L. c. 159, § 19A. This statute also provides that Centrex customers have a reduced call allowance, and certified elderly and handicapped customers have an unlimited directory assistance call allowance.

E911 and disability equipment and training fund (“Verizon E911 Fund”) began in 1991 as an outgrowth of DPU 91-68 (1991) and has been running a deficit since 1994. Verizon Fourth E911 Annual Tracking Report (1995). Verizon reports that, from 1991 to 2001, the Verizon E911 fund earned \$156,621,000 in revenues from residential and business directory assistance calls and incurred \$152,178,000 in residential and business E911 and disability services expenses. Verizon E911 Reports, First through Eleventh. Verizon reports further that its E911 fund credited \$30,984,000 back to consumers from 1991 to 1996 as a customer dividend, a practice that Verizon discontinued in 1996 because of the growing shortfall in revenues. *Id.* Based on the expenses, dividends and revenues reported by Verizon, its E911 fund has incurred a \$26,542,000 deficit.²

Verizon states that the Verizon E911 fund residential and business expenses have run approximately \$15 - \$17 million annually since 1994. Verizon Fourth through Eleventh Annual Tracking Reports. In this same time period, annual directory assistance revenues have fallen from nearly \$19 million in 1994 to \$9 million in 2001. *Id.* The SETB uses these funds to upgrade the 270 wireline-based public safety answering points (“PSAPs”), to train PSAP personnel, to purchase relay equipment for disabled customers, and to install hearing-amplification devices in public payphones. The SETB also manages a separate E911 fund to handle wireless calls, which reportedly now make up approximately one-third of all incoming E911 calls.³

II. THE PROPOSED REGULATIONS

Under the proposed regulations (220 CMR §§16.00 - 16.06), all local telephone exchange carriers would assess all business and residential customers with voice-grade local access lines a monthly wireline E911 surcharge. The Department would determine the amount of an interim amount and a final amount for the surcharge at a later time. The SETB would manage the wireline E911 fund from January 1, 2003, to December 31, 2007, when the legislature will evaluate the Department’s long term recommendations for continued funding.

The SETB would file annual reports with the Department on its prudent expenses and surcharge revenues by August 31 of each year. The SETB would be required, also on August 31 of each year, to update its cost projections for the next five years. Also, the SETB would be

² According to the Department’s order, Verizon estimates that the deficit was \$28.6 million at the end of 2001 and \$40 million at 2002. The basis for Verizon’s 2002 estimate is not contained in the Eleventh Report. Order, p. 2.

³ The wireless E911 fund was established by Senate bill 2260, “An Act Establishing Wireless Enhanced 911 Services,” and enacted as Chapter 61 of the Acts of 2002. Wireless subscribers in Massachusetts have been paying \$.30 per month into the wireless E911 fund as a surcharge since July 1, 2002. The wireless legislation designates those funds to be applied to upgrade the wireless PSAPs in Massachusetts and prepare the state for the Federal Communications Commissions’ Phase I and Phase II E911 deployment program.

required to file a report with the Department by June 30, 2007 with the number of lines currently served and a five-year estimate of its costs.

All telecommunications companies providing local service, including resellers, would collect payments from their end user consumers each month, then forward the revenues, with interest, to SETB each quarter. The companies are required: (1) to give the Department and SETB five-year projections of their costs and line counts and to file a report of surcharge amounts the companies collect and remit to SETB by August 1 of each year; (2) to give the Department a status report on recovery of the remaining wireline E911 deficit; and (3) to use the E911 funds to pay prudently incurred program expenses. The companies would be allowed to retain one percent of the surcharge collected as an administration fee.

The Department will determine, in this proceeding, how much of the E911 deficit will be recovered by the new E911 wireline surcharge. The DTE can revise the wireline surcharge annually. The DTE must file a report to the state legislature each year evaluating whether SETB made prudent investments and incurred prudent expenses.

III. COMMENTS

A. The Department Should Set The Surcharge Amount Based On Evidence Presented At Hearings.

The amount to be recovered from ratepayers through the E911 surcharge is a matter for adjudication. G.L. c. 30A. The DTE, therefore, should conduct adjudicatory hearings, with sworn testimony, cross-examination and briefs, to determine the actual surcharge amount. The record should include evidence on actual and estimated costs, line counts, forecasts, anticipated surcharge revenues, and any differences that would justify charging consumers different amounts for wireline versus wireless E911.

B. The Department Should Examine the Deficit Closely.

The Department should investigate the nature, extent, and effect of E911 wireline fund shortfall. This will help the Department, SETB, and telecommunication companies avoid perpetuating the deficit, approving imprudent investments of consumer's funds, and delaying growth of the E911 capabilities. The Department should determine how much of the deficit is attributable to wireless versus wireline and whether the accounting of fund amounts has been proper. Interested parties should be afforded the opportunity to ask SETB and Verizon representatives about issues such as the past management of the wireline and wireless E911 funds and revenues, to whom the deficit is owed, the effect of the deficit to date, and how soon the deficit should be eliminated.

C. The Department Should Direct The Companies to Reduce Their Directory Assistance Tariff Charges.

Under current law, all business and residential customers are entitled to receive ten direct dialed directory assistance calls each month. G.L. c. 159, § 19A. Currently, Verizon assesses an additional charge of \$.34 per call in its Directory Assistance tariff rates (M.D.T.E. Tariff No. 10, Part A, Section 5) for calls above 10 per month. Other local exchange carriers may have similar provisions. The Department should require local exchange carriers to eliminate their excess directory assistance calling fees after the deficit has been recovered because the E911 wireline surcharge mechanism replaces those fees. Alternatively, the Department should direct all common carriers to remit their excess directory assistance calling fees into the SETB wireline E911 fund and direct the SETB to include the additional fees as revenue for purposes of calculating the wireline E911 surcharge.

D. The Companies Should Educate Consumers About The Wireline E911 Surcharge.

In order to minimize consumer confusion over the new line item charges, the Department should require that all telecommunications carriers list the wireline E911 surcharge on bills as “E911/Disability Access Fee.” Furthermore, the Department should require all telecommunications companies to notify their customers of the nature and reason for the wireline E911 surcharge in a clear and conspicuous manner. The notice should include, but not be limited to, a bill insert and other consumer education material that clearly describe the purpose and amount of the surcharge.

IV. CONCLUSION

For these reasons, the Department should schedule adjudicatory hearings to determine the actual wireline E911 surcharge amount for past and ongoing E911 and related expenses, reduce carriers’ excess directory assistance charges after the deficit has been recovered, and require that carriers clearly describe the wireline E911 surcharge conspicuously on consumers’ bills.

Sincerely,

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Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 C.M.R. §§ 2.00 et seq., to promulgate regulations to establish a funding mechanism for wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones, as 220 C.M.R. §§ 16.00 et seq.

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